

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JOSELUIS GARCIA GONZALEZ,
Plaintiff
v.
NANCY A. BERRYHILL, Acting
Commissioner of Social Security,
Defendant.

Case No. 8:17-cv-00636-GJS

MEMORANDUM OPINION AND ORDER

I. INTRODUCTION

Plaintiff Joseluis Garcia Gonzalez appeals from the Commissioner's denial of Social Security Disability Benefits ("DIB") and Supplemental Security Income ("SSI"). The parties filed consents to proceed before the undersigned United States Magistrate Judge [Dkts. 9, 10] and briefs addressing disputed issues in the case [Dkt. 23 ("Pltf.'s Br.") & Dkt. 24 ("Def.'s Br.")]. The Court has taken the parties' briefing under submission without oral argument. For the reasons discussed below, the Court finds that this matter should be affirmed.

II. ADMINISTRATIVE DECISION UNDER REVIEW

On August 30, 2011, Plaintiff filed applications for DIB and SSI alleging disability from July 18, 2009. [AR 103-110.] The applications were denied initially on October 6, 2011, and upon reconsideration on December 21, 2011. [AR 57-60;

1 64-68.] A hearing was held on July 12, 2012. [AR 249-259.] Subsequently, an
2 investigation revealed that Plaintiff replaced the front lawn of his house by himself,
3 repaired the front lawn sprinkler system, and lifted heavy items while performing
4 other maintenance on his house. [AR 181-184, 240-241.] On June 20, 2013, a
5 second hearing was held to address the findings in the investigation report. [AR
6 238-248.] The ALJ issued a decision denying Plaintiff's request for benefits on
7 August 23, 2013. [AR 12-23.] Plaintiff requested review from the Appeals
8 Council, which denied review on January 28, 2015. [AR 4-8.] Plaintiff filed an
9 action in this Court, and, shortly thereafter, the parties agreed to a voluntary remand
10 for the purpose of "re-evaluat[ing] the medical source opinions in the record, and
11 explain[ing] the reasons for the weight he gives to those opinions." [AR 300-301.]
12 The Court accepted the stipulation and "remanded for further proceedings consistent
13 with the terms of the Stipulation of Remand." [AR 302.]

14 A third hearing was held on September 29, 2016 before the same ALJ, Joseph
15 P. Lisiecki III. [AR 413-434.] On December 27, 2016, the ALJ issued a decision
16 again denying Plaintiff's request for benefits. [AR 260-278.] Plaintiff now seeks
17 review directly from this Court. *See* 20 C.F.R. §§ 404.984, 416.1484.

18 Applying the five-step sequential evaluation process, the ALJ found that
19 Plaintiff was not disabled. *See* 20 C.F.R. §§ 404.1520(b)-(g)(1); 416.920(b)-(g)(1).
20 At step one, the ALJ concluded that Plaintiff has not engaged in substantial gainful
21 activity since July 18, 2009, the alleged onset date, through December 31, 2014, his
22 date last insured. [AR 269.] At step two, the ALJ found that Plaintiff suffered from
23 the following severe impairments: polyarticular disc degeneration of the cervical
24 spine and lumbar spine. [*Id.* (citing 20 C.F.R. §§ § 404.1520(c) and 416.920(c)).]
25 Next, the ALJ determined that Plaintiff did not have an impairment or combination
26 of impairments that meets or medically equals the severity of one of the listed
27 impairments. [*Id.* (citing 20 C.F.R. Part 404, Subpart P, Appendix 1; 20 C.F.R. §§
28 404.1520(d), 404.1525, 404.1526, 416.920(d), 416.925, and 416.926).]

1 The ALJ found that Plaintiff had the following residual functional capacity
2 (RFC):

3 [M]edium work as defined in 20 CFR 404.1567(b) and
4 416.967(b) except [Plaintiff] can perform all postural
activities on a frequent basis.

5 [AR 269-270.] Applying this RFC, the ALJ found that Plaintiff is able to perform
6 past relevant work as a construction worker II and cleaner and, thus, is not disabled.
7 [AR 276.]

8 **III. GOVERNING STANDARD**

9 Under 42 U.S.C. § 405(g), the Court reviews the Commissioner’s decision to
10 determine if: (1) the Commissioner’s findings are supported by substantial
11 evidence; and (2) the Commissioner used correct legal standards. *See Carmickle v.*
12 *Commissioner*, 533 F.3d 1155, 1159 (9th Cir. 2008); *Hoopai v. Astrue*, 499 F.3d
13 1071, 1074 (9th Cir. 2007). Substantial evidence is “such relevant evidence as a
14 reasonable mind might accept as adequate to support a conclusion.” *Richardson v.*
15 *Perales*, 402 U.S. 389, 401 (1971) (internal citation and quotations omitted); *see also Hoopai*, 499 F.3d at 1074.

17 **IV. DISCUSSION**

18 Plaintiff’s sole contention is that the ALJ is bound by his finding in his first
19 decision that consultative examiner, Dr. H. Harlan Bleecker’s, opinion is entitled to
20 “great weight” and erred by affording “little weight” to Dr. Bleecker’s opinion in his
21 second decision. [Pltf.’s Br. at 4-10.]

22 Plaintiff argues that this Court’s Order of October 14, 2015, and the
23 subsequent Appeals Council’s Order remanded the matter to the ALJ with
24 instructions to “further examin[e] [] the sitting, standing, and walking limitations,”
25 recognizing that “the ALJ found Dr. Bleecker’s opinion [to] merit[] ‘great weight.’”
26 [Pltf.’s Br. at 5.] The Commissioner, on the other hand, contends that “neither the
27 Court’s remand order nor the Appeals Council’s remand order required the ALJ to
28 give any particular weight to Dr. Bleecker’s opinion.” [Def.’s Br. at 5.] Rather,

1 “they both specifically stated that the ALJ was to re-evaluate the opinion evidence
2 in this case.” [Id.] The Court finds that the ALJ did not reopen the case beyond the
3 issues identified in the October 14, 2015 Order of this Court or the Appeals
4 Council’s Order.

5 As a general principle, the United States Supreme Court has recognized that
6 an administrative agency is bound on remand to apply the legal principles laid down
7 by the reviewing court. *See F.C.C. v. Pottsville Broadcasting Co.*, 309 U.S. 134,
8 145 (1940); *see also United Gas Improvement Co. v. Continental Oil Co.*, 381 U.S.
9 392, 406 (1965) (explaining that the agency must act upon the court’s correction on
10 remand). More recently, the Supreme Court has recognized that the Commissioner
11 is not free to disregard its marching orders on remand:

12 Where a court finds that the Secretary has committed a
13 legal or factual error in evaluating a particular claim, the
14 district court’s remand order will often include detailed
15 instructions concerning the scope of the remand, the
16 evidence to be adduced, and the legal or factual issues to
17 be addressed. Often, complex legal issues are involved,
18 including classification of the claimant’s alleged disability
19 or his or her prior work experience within the Secretary’s
guidelines or “grids” used for determining claimant
disability. *Deviation from the court’s remand order in the
subsequent administrative proceedings is itself legal error,
subject to reversal on further judicial review.*

20 *See Sullivan v. Hudson*, 490 U.S. 877, 886 (1989) (emphasis added; internal
21 citations omitted).

22 Plaintiff argues that the ALJ is bound by his previous finding that Dr.
23 Bleecker’s opinion is entitled to “great weight.” [Pltf.’s Br. at 4, 8; AR 21.] This
24 argument is misplaced. The Court’s remand order approved the parties’ stipulation,
25 voluntarily remanding the case for the purpose of “*re-evaluat[ing]* the medical
26 source opinions in the record, and explain[ing] the reasons for the weight he gives to
27 those opinions.” [AR 300-301 (emphasis added).] In addition, the Appeals Council
28 remand order required “*further evaluation of Dr. Bleecker’s opinion* and its impact

1 on multiple steps in the sequential evaluation process.” [AR 311 (emphasis added).] 2 Thus, both orders specifically required the ALJ to re-evaluate Dr. Bleecker’s 3 medical source opinion. The ALJ complied and found, upon re-evaluation, that Dr. 4 Bleecker’s opinion is entitled to “little weight.” [AR 274.]

5 The Court now turns to the substance of the ALJ’s decision and finds that the 6 ALJ’s evaluation of Dr. Bleecker’s opinion is supported by substantial evidence.

7 In general, a treating physician’s opinion is entitled to more weight than an 8 examining physician’s opinion, and an examining physician’s opinion is entitled to 9 more weight than a nonexamining physician’s opinion. *See Lester v. Chater*, 81 10 F.3d 821, 830 (9th Cir. 1995). An ALJ must provide clear and convincing reasons 11 supported by substantial evidence to reject the uncontradicted opinion of a treating 12 or examining physician and specific and legitimate reasons supported by substantial 13 evidence to reject the contradicted opinion of a treating or examining physician. 14 *Bayliss v. Barnhart*, 427 F.3d 1211, 1216 (9th Cir. 2005) (citing *Lester*, 81 F.3d at 15 830-31).

16 Dr. Bleecker examined Plaintiff in January 2013. [AR 273.] Dr. Bleecker 17 noted that Plaintiff was a poor historian, but nonetheless diagnosed Plaintiff with 18 degenerative disc disease and degenerative arthritis of the cervical and lumbar spine 19 and acetabular protrusion and degenerative arthritis of the right hip. Dr. Bleecker 20 opined that Plaintiff could: (1) lift and carry ten pounds frequently and twenty 21 pounds occasionally, (2) sit for thirty minutes; (3) stand and walk for thirty minutes; 22 (4) and stand and walk for six hours in an eight-hour workday. [*Id.*] He stated that 23 Plaintiff did not require use of a cane, could occasionally reach overhead with the 24 upper extremities, and could otherwise reach, handle, finger, feel, push, and pull 25 frequently. [*Id.*] He reported that Plaintiff could use both feet and could 26 occasionally climb stairs and ramps, but could not climb ladders or scaffolds. [*Id.*] 27 He opined that Plaintiff could occasionally balance, stoop, crouch, crawl, and kneel. 28 [*Id.*] In addition, Plaintiff could perform activities such as: shopping, traveling

1 without a companion, ambulating without using an assistive device, and taking
2 public transportation. [Id.] Plaintiff was able to climb a few steps at a reasonable
3 pace with the use of a handrail and could prepare meals and otherwise take care of
4 himself. [Id.]

5 Dr. Timothy K. Ross, M.D., an orthopedic surgeon, examined Plaintiff
6 several years later in April 2016. [AR 275.] Dr. Ross found that Plaintiff had
7 polyarticular/disc degeneration and reported a possibility of bilateral plantar
8 fasciitis. [Id.] However, Dr. Ross noted “no evidence of any significant extremity
9 tendinopathy or mobility limitations” and “no indication for advanced diagnostic
10 testing or operative intervention.” [Id.] He further noted that Plaintiff’s orthopedic
11 condition was “stable.” [Id.] Dr. Ross opined that Plaintiff could lift or carry fifty
12 pounds occasionally and twenty-five pounds frequently and could stand or walk for
13 six hours in an eight-hour workday. [Id.] Dr. Ross found that Plaintiff had no
14 restriction with regard to sitting or using his extremities and did not require an
15 assistive device or any form of orthosis. [Id.] The ALJ gave Dr. Ross’ assessment
16 “great weight.” Given the conflicting opinions, the Court will uphold the ALJ’s
17 determination that Dr. Bleeker’s opinion is entitled to less weight if the ALJ gave
18 specific and legitimate reasons, based on substantial evidence, for according “little
19 weight” to Dr. Bleeker’s opinion. *Lester*, 81 F.3d at 830-31.

20 Here, the ALJ found that Dr. Bleeker’s opinion is entitled to “little weight”
21 because it is: (1) “not consistent with the other evidence” and (2) not consistent with
22 “[Plaintiff’s] activities.” [AR 274.] Specifically, the ALJ found that Dr. Bleeker’s
23 opinion that Plaintiff could not sit, stand, or walk for more than thirty minutes at a
24 time was inaccurate because Plaintiff “is regularly able to work in his yard and
25 engage in strenuous activities for long periods of time.” [Id.] The ALJ similarly
26 found Dr. Bleeker’s lifting and carrying limitations inaccurate given that Plaintiff’s
27 “actual activity level [] includes lifting and carrying heavy items.” [Id.] Lastly, the
28 ALJ found Dr. Bleeker’s limitations regarding Plaintiff ability to reach overhead,

1 climb, balance, stop, crouch, crawl, and kneel to be similarly contradicted by
2 Plaintiff’s “ability to perform strenuous yard work on a regular basis.” [Id.] These
3 activities cited by the ALJ were taken from the investigative report, which included
4 information obtained by interviews with third party witnesses. [AR 181-184.] One
5 witness described Plaintiff’s ability to walk normally without an assistive device,
6 drive his truck on a daily basis, and work on his house and yard. [AR 183.] The
7 witness observed Plaintiff “remove the grass from his yard and plant new grass by
8 himself.” [Id.] A second witness also observed Plaintiff working on his yard and
9 “driving a blue pickup truck loaded with supplies and materials that he uses to fix
10 his house.” [Id.] The witness described Plaintiff as “carrying what appeared to be
11 heavy items from his truck to his residence,” “install[ing] a new sprinkler system
12 and new landscaping by himself,” and “pull[ing] the old grass from his lawn using
13 manual tools rather than power equipment.” [AR 183-184.] At the June 20, 2013
14 supplemental hearing, Plaintiff admitted that he performed these activities but stated
15 that he “did it very slowly” and with the help of others. [AR 241-242.] The ALJ
16 found Plaintiff’s testimony to be less than fully credible. [AR 275-276.] Plaintiff
17 does not challenge this finding here. Accordingly, the Court presumes that the
18 adverse credibility finding was legally valid.

19 Inconsistency with daily activities is a specific and legitimate reason for
20 discounting a treating or examining physician’s opinion. *See Ghanim v. Colvin*, 763
21 F.3d 1154, 1162 (9th Cir. 2014); *Morgan v. Comm’r of Soc. Sec. Admin.*, 169 F.3d
22 595, 600–02 (9th Cir. 1999); *Fisher v. Astrue*, 429 Fed.Appx. 649, 652 (9th Cir.
23 2011). Thus, the ALJ’s identification of inconsistencies between Plaintiff’s daily
24 activities and the highly restrictive limitations in Dr. Bleecker’s opinion constitutes
25 a specific and legitimate reason for giving his opinion little weight.

26 The ALJ also found that there is “nothing in the evidence” to support Dr.
27 Bleecker’s opinion that Plaintiff could not sit, stand, or walk for more than thirty
28 minutes at a time. An ALJ may discredit any treating or examining physician’s

1 opinion that is unsupported by the medical record as whole or by objective medical
2 findings. *Batson v. Comm'r of Soc. Sec. Admin.*, 359 F.3d 1190, 1195 (9th Cir.
3 2004). Here, the ALJ described numerous medical records indicating that Plaintiff
4 had normal gait, normal muscle strength, no atrophy, and no muscle spasms. [AR
5 156-157, 271-273, 405.] The ALJ therefore properly rejected Dr. Bleecker's
6 opinion for the specific and legitimate reason that it was not supported by the
7 objective medical evidence of record, as well as for inconsistency with Plaintiff's
8 daily activities, as discussed above. Although Plaintiff disagrees with the ALJ's
9 conclusion, "the ALJ is the final arbiter with respect to resolving ambiguities in the
10 medical evidence." *Tommasetti*, 533 F.3d at 1041; *see Thomas v. Barnhart*, 278
11 F.3d 947, 954 (9th Cir. 2002) ("Where the evidence is susceptible to more than one
12 rational interpretation, one of which supports the ALJ's decision, the ALJ's
13 conclusion must be upheld."). This issue, therefore, does not warrant remand.

14 **V. CONCLUSION**

15 For all of the foregoing reasons, **IT IS ORDERED** that the decision of the
16 Commissioner finding Plaintiff not disabled is **AFFIRMED**.

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18 **IT IS SO ORDERED.**

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20 DATED: April 25, 2018



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GAIL J. STANDISH
23 UNITED STATES MAGISTRATE JUDGE
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